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November 1, 2019

Hon. Frank P. Geraci, Jr.  
Chief United States District Judge  
U.S. Courthouse  
100 State Street  
Rochester, New York 14614

**VIA ECF**

**Re:   *Horn v. Medical Marijuana, Inc., et al.***  
**Civil Action No.       :       1:15-cv-00701 FPG/MJR**  
**Our File No.            :       7023**

Dear Chief Judge Geraci:

My office represents the defendants Medical Marijuana, Inc. and Red Dice Holdings, LLC (MMI/RDH) in the referenced action.

On October 18, 2019, the Court issued a text order (Dkt. 119) permitting plaintiffs to file a reply regarding their cross-motion for reconsideration by November 1, 2019. The Court further stated that no further briefing is permitted absent prior leave.

On October 31, 2019, plaintiffs filed an Affidavit of Kenneth D. Graham, Ph.D. (Dkt. 120). This affidavit states in paragraph 2 that it is “in rebuttal to MMI/RDH’s response to plaintiff’s opposition to MMI/RDH’s motion pursuant to Fed. R. Civ. P. 54(b) for reconsideration and revision[.]” This means that the affidavit is not truly a reply affidavit in further support of the plaintiffs’ cross-motion for reconsideration, but a sur-reply affidavit in further opposition to MMI/RDH’s pending motion (Dkt. 97). Moreover, regardless of how the affidavit is characterized, the substance of the affidavit touches upon issues raised in MMI/RDH’s pending motion.

As the plaintiffs have filed what is stated to be a sur-reply affidavit, and the affidavit contains numerous statements which require a response in order to clarify the issues currently before the Court, MMI/RDH respectfully requests the Court’s permission to also file a sur-reply with respect to the plaintiffs’ most recent filing. With the Court’s permission, MMI/RDH could file the same within one week of the Court’s text order.

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Thank you for your attention to and consideration of this request.

Respectfully submitted,

MURA & STORM, PLLC

A handwritten signature in black ink, appearing to read "Roy A. Mura", with a long, sweeping horizontal stroke extending to the right.

Roy A. Mura

RAM/sdm

cc: Via ECF:  
Jeffrey Benjamin, Esq.  
Jean-Claude Mazzola, Esq.